

THE  
RELATION  
BETWEEN  
The Lord of a Mannor  
AND THE  
Copy-holder his Tenant.

*Delivered*

In the Learned Readings of the late Excellent  
and Famous Lawyer, CHAR. CALTHROP  
of the Honourable Society of  
*Lincolnes-Inne, Esq.*

Whereby it doth appeare for what causes a Copy-  
holder may forfeit his Copy-hold Estate, and for  
what not : and likewise what Lord  
can grant a Copy, and  
to whom.

Published for the good of the Lords of Mannors, and  
their Tenants.

*Non magis pro manibus quam pro servandis legibus liberi Cives  
pugnare debent, siquidem sine manibus Respublica potest con-  
sistere, sine Legibus non potest.*

---

The second Edition, much corrected and amended : and also  
a Table of the Contents newly added.

---

LONDON,

Printed for *W. Lee*, and *D. Pakeman*, at the Turkes-  
head, and Rainbow in Fleet-Street, 1650.

# THE REPARATION

BETWEEN

THE LORD OF A MANOR

AND THE

CONFESSIONS

OF THE LORD OF A MANOR

IN THE COUNTY OF

GLoucestershire

AND

THE LORD OF A MANOR

IN THE COUNTY OF

GLoucestershire

AND

THE LORD OF A MANOR

IN THE COUNTY OF

GLoucestershire

AND

THE LORD OF A MANOR

IN THE COUNTY OF

GLoucestershire

AND

THE LORD OF A MANOR



## Coppy-Holds.

**T**H E great injuries which are offered, and small remedies which are used in cases of Coppy-holds, which as it seemeth, doe grow by the obscure knowledge what Law and Custome judgeth in these matters of Coppy-hold; moveth me to shew some part of my Travailes in these points, not thereby to animate Coppy-hold Tenants which would by too much advancing their Tenure, pretend only to be Tenants by Custome, and not Tenants at *Will*, nor to encourage any Coppy-hold Lord, which would by too much abasing these *Tenures*, pretend to have such Coppy-holders onely Tenants at *Will*, and not regard their customes; but to prove unto you, that as their Title and name sheweth they are Tenants at *Will*, and Tenants by Custome in their Land, and they consist both of their Lords *will* and *custome* of the *Mannour* in their degrees. And that this *Will* and *Custome* be contained within the Limits of Law and reason, according to such rules as shall be hereafter declared.

A

First

(3)

First I will shew what a Copy-hold is, then whereof it doth consist, and what estimation the same is of, by the antiquity of time, and by the Lawes and statutes of this Realme.

Master *Littleton* in his first book of *Tenures* defineth a Tenant by Copy of Court Role to be where a man is seised of a *Mannour* in which is a *Custom* that hath been used time out of mind, that certain Tenants of the same *Mannour* have used, to have certain Lands and Tenements to hold to them and their heires, in Fee Simple, Fee Taile, or for life at the will of the Lord after the custome of the Mannour: And that they have noother evidence but the Roles of the Court; by which definition, and by certain other observations of the Law it may be gathered, that a Copy-hold doth consist of these six principall grounds, or circumstances (*viz.*)

First, there must be a *Mannour*, for the maintenance of *Copy-hold*.

Secondly, a custome for the allowing of the same.

Thirdly, there must be a Court holden for the proof of the Copy-holders.

Fourthly, there must be a Lord to give the *Copy-hold*.

Fifthly, there must be a *Tenant* of capacity to take the *Tenement*.

Lastly, the thing to be Granted, which must be such as is Grantable, and may be held of the



the Lord according unto the *Tenure*.

But first before I speak of these circumstances, I will briefly declare unto you the Dignity and estimation of *Copy-holders*, by the Antiquity and allowance of time, and by the Lawes and Statutes of this Realme.

It appeareth by a certain Booke intituled *De prisca Anglor. legibus*, translated out of the Saxon Tongue by Master Lambert of *Lincolnes Inne*; that *Coppy-holds* were long before the Conquest, and then called by the name of (Bookeland) as you may see in the beginning of the Booke, in the Treatise *De rerum & Verborum explicatione*; and by Master BR ACTON an Ancient Writer of the Lawes of ENGLAND, who in his Boke writeth divers presidents and records of King Henry, of allowance that *Copy-holders* or *Customary tenants* doing their due services, the Lord might not expell them; according to the opinion of the latter Iudges, in the time of Edward the third and Edward the fourth: and it appeareth by Master Fitz-Herberts *Abridgement*, they were preserved by a *speciall writ* for that purpose, and the Lord thereby compelled to do right. And in the time of Henry the fourth, Tenants by the Virge, which are the same in Natur<sup>e</sup>, as *Copy-holders* be, were allowed by the name of *Sokemaines* in *Frankenure*, and in the time of Henry 7. were allowed aid of the King for defence of their estates. So that in every Kings time

42. Ed. 3. 25. 7.

E. 4.

per Danby 21.

E. 4.

per Brian. 4. Rep.

Brownes Case.

15. H. 7. 10. 27.

H. 8. 28.

*Coppy-holders* have had their Allowances according unto their Natures unto this present time: wherein our Iustices are still of opinion, as the said grave Sages have been in times past. Now I will further proceed in some particular use of these Tenures, according to the Lawes and Statutes of this Realm: And because I find none that doth so much deface the estimation of *Coppy-holders*, as Master *Fitz-Herbert* doth in his Writ *De Reto clauso*, I will begin with his words and judgement in the same, and proceed to other Authorities.

Master *Fitz-Herbert* saith, that this Terme *Coppyholders* is but a new Terme, newly found out, and that in old time they were called Tenants in *Vilenage*, or base Tenure; and this saith he doth appeare in the old Tenures; for no *Coppy-holders* are there spoken of, although there were at that time such Tenants. But then saith, they were called Tenants in *Villénage*, and saith as appeareth *Hillar. 14. Henry 4.* If a false judgement be given against them, in the Lords Court, they shall have no remedy, but sue to their Lord by petition, because to hold by Copy of Court Role, which is as he saith base Tenure, is to hold in *Villénage*; which said opinion of *Fitz-Herbert*, has been by divers wrested, to make no diversity between Tenure in *Villénage*, and Tenure by Copy of Court Role or base Tenure; wherein whatsoever interpretation may be made, Master *Fitz-Herberts* meaning

*Fitz. Nat. Br.*  
*12. B and C*

meaning is very plaine, and the Book of the old Tenures is to be far otherwise understood: as also I suppose, all other authorities in our Law do make and appoint difference between the said Tenures. And first touching the Book of the old Tenures, it is plaine, that the Booke maketh a plaine distinction between Tenure in Villenage, and Tenure in Fee Base, which is understood this Tenure by Coppyhold, and calleth it a Fee, although a base Fee, and maketh diverse distinctions between them, and saith, that the Tenants in Villenage must doe all such things as their Lord will command them. But otherwise, it is of the Tenants in base Fee. And thus it seemeth the said Booke of old Tenures is by Master Fitz-Herbert misrecited; which I am the bolder to affirm, saving the due reverence to his Learning, because one Master Thornton of Lincolns Inne, a man very learned, in his late reading there upon the Statute of Forger de faits: speaking of Forging Court Roles, did plainly affirme the Book of the old Tenures to be mistaken by Master Fitz-Herbert in this point. And besides for the further credit of Coppy-holds, we ought to consider the great Authority of Mr. Littleton, who amongst the rest of his Tenures, doth make a divided Chapter thereof, differing from the Tenure in Villenage, shewing there the Suites and Plaints of Coppy-holders, saying that they have an Estate of Inheritance according to the

Custom: And delivereth his own opinion, that if a *Codpyholder* doing his services be expelled by the Lord, he shall have an Action of trespass against his Lord: and saith that *Danby* and *Brian* 21. Ed. 4. were of the same minde, according to which is *Brañon*; and the said Presidents of *Hen.* 3. and the Writ used in *Tempore*, R. 2. besides many other reasons at the Common-Law, &c. proving that by use and circumstance things may alter and change their originall nature.

As for example, the services of *Socage tenure* was at the beginning, (as Mr. *Littleton* saith) to Till the Lords Land, &c. And yet now by consent of the Lord, and by continuance of time are turned into money, and other Services in lieu thereof. Even so may it be said of *Coppyholds*, as long as the *Tenants* themselves be free, though their *Tenure* were at beginning never so bound and base: yet by course of time, they may gain more liberty and freedome, and grow to more estimation and account, Another reason and Rule there is at the Common Law to this intent, that some things there were which in the beginning were but *voluntary*, and yet in the end by continuance became *Compulsary*, as appeareth by the 27. *Ass. pla.* 8. & *Brook tit. prescrip. pla.* 49. That a man that did at the first of his own benevolence repair a high way or a Bridge, by often using to do it, was afterwards compelled thereunto *volens nolens*.  
Even

Even so it may be said of the *Coppy-holders*, who at the first held but at the free wil of the Lord; yet now by usage and continuall granting time out of mind, they have gotten an estate after the Custome, that doing their Services, and behaving themselves well, they cannot by Law or Reason be deprived. Thus much for the allowance of *Coppy-holders* by the Common-Law. Now let us consider the Reputation of them by the Statutes and Parliament Law.

It appeareth by the Statute of 1. *Rich. 3. cap. 4. & 19, Hen. 7. cap. 16.* That a *Coppy-holder* that may dispend twenty six shillings eight pence by the yeare, shall be Empanelled on a Jury, as he that may dispend twenty shillings by the yeare of Free Lands. And by the Statutes of the 2 *Ed. 6. cap. 8.* the Interests of *Coppy-holders* are reserved, being found by Office after the death of the Kings Tenants, as well as other estates at the Common-Law; and so doth the Statute of Monasteries, 31. *Hen. 8. cap. 13. & 1. Ed. 6. cap. 14.* preserve *Coppy-holds* from dissolving. And it will seem that *Coppy-holders* are for the good of the common-wealth, and therefore to be maintained, for that some have beene erected and established by Parliament, which were not demisable by *Coppy* before, as appeareth by the Statutes of 35. *H. 8. c. 13. 37. H. 6. c. 2. 6. 2. Ed. 6. cap. 12.*

*what shall be said a Mannour and such a Mannour as will maintain a Coppy-hold.* A Mannour  
con-

Statutes and  
Parliament  
Laws.

consistes in two parts (*viz*) Demeasnes and Services; and neither of these two parts hath the name of a Mannour without the other: for as a Messuage of Lands cannot be called Demeasnes without Tenants thereunto belonging, to pay Rents and doe Services. So on the other part, though a man have Tenants to pay him Rents, and do him Service, and no Messuage or Lands whereupon to keep his Court, and to receive his Rents and Services, this cannot be called a Mannour, but onely a signiory in grosse. *Fitz. na. brev.* s3. & 8.

*Demeasnes* are so called, for that the Lord himself occupieth and manureth them *In son maine Demeasne*; but all Lands that have been in the Lords own hands, be not called *Demeasnes*; for all Free-holds and Coppy-holds were in his own hands at the beginning. But *Demeasnes* is that which is now, and time out of mind have been in the Lords hands, or occupation of his Bayliffe or Servants: And in that respect also ancient Coppy-hold may be to some purpose called *Demeasnes*, because every Surrender is in *Manus Domini*, and every grant *extra manus Domini*; the Lord hath a medling with it, and may thereupon keep his Court, and for the most part cut down Time ber, and such like: and that is also called *Demeasnes*, which now is in the Lords hands by any new Escheate or forfeiture. And also the  
Lands

Lands which are in the hands of the Copy-holders, and such a *Demeasne* as with other Services will make a Mannour; though the Lord hath none other demesnes there in his own hands, nor in the hands of his Bayliffe, or servants, such service, as with a Demeasne, shall make a Mannour to maintaine. Copy-holds is where a man holdeth Lands or Tenements freely by suit to the Court of the Lord of the Mannour within the said Fee: But yet every kind of Service will not make a Mannour; for Services are of two kinds, viz. That is by Tenure and by Covenant; Service by Tenure is also of two sorts; as if a man at this day giveth his Land in Taile, or leaseth it for Life or Yeares, saving the reversion: here is a Service of Fealty incident to this Tenure, betweene the Donor or the Lessor, and the Donee or the Lessee. And yet though this be a Service by Tenure, yet it is no such Service as will make a Mannour. For if a man at this day be seised of twenty Acres of Land, and Enfeoffeth nineteen severall persons of nineteen of these Acres, saving the twentieth to himself, and reserveth of every of his Feoffees suite of the Court and other Services to be done to this Court, to be held on the twentieth Acre, though the Feoffments be by Deed indented, or in taylor or of Lives, yet all is void, and availeth not to make a Mannour. But it maketh onely a Tenure in grosse; for a Tenure may by

Br. Comp. 31.  
3; H. 3.

divers meanes be created at this day; but a Mannour by no way, by a common person.

A Mannour must be by Prescription, and the Services by continuance, time out of mind.

Pla. 14 Bro.  
Tit. Tenure 26.

But although a man at this day cannot make a Mannour, yet he may in some sort enlarge a Mannour by adding more Services unto it. 9.

*Aff.* A man seised of a Mannour did give parcell of the same to hold of him by suit to his Mill within the same Mannour; for this Service the Lord may distrain, and it is there held to be accounted parcell of the Mannour.

In the case of  
Monsen and  
Aston.

By the report  
of Denham of  
Lincolns Inne.

In like manner a man may by reserving upon a gift, Intayle, or Lease for life, Services in grosse, increase the Services of an ancient Mannour. *Signior grant le Demeasnes & services del son Mannour de Norhelfey & ceo extend en auter Towne per le melior opinion des Iustices de Common Bank le grantees, &c.* may keep a Court there, and so a Mannour to be created at this Day.

What shall be said a Mannour or a Tenure in his proper nature or by Common-Law, and what in respect of Usage or Custome to maintain Coppyholds.

It is to be noted, that although a Mannour of his proper nature ought to consist of demesnes and Services, yet in some Cases that maybe a Mannour, and maintain Coppyholders, and a Court Baron by usage and custome, which otherwise by Common-Law is



is no Mannour, nor cannot so be called, &c.

A man seized of a Mannour whereto be divers free-Tenants, divers Coppyholders, and divers special Customary Tenants, and the customary Tenants do hold to give attendance on the Free-holders at the Lords Court. All the free Tenants dying saving one, the Lord doth bargain and sell the Mannour to an estranger: This is now in respect of the Free Tenants, a *Tenure*, and no Mannour; in respect of the Coppy-holders, both a *Mannour* and *Tenure*; and in respect of Customary Tenants, neither *Manour* nor *Tenure*.

If divers doe hold Lands to dine with the Lord every Sunday in the yeare; this maketh neither good *Tenure* nor *Mannour*.

But if they hold to wait on the Lord every Sunday at dinner, and to dine with him; this maketh a good service, but no good *Tenure*.

If divers doe hold Lands by *Coppy* of the *Mannour* of D. and so have done time out of mind, and by the like time there hath been no Free-holders to the said Mannour, although this be no *Mannour* in its proper nature, yet by usage it is a good *Mannour* to maintaine *Coppy-holds*.

A man seized of a *Mannour*, which time out of mind hath been called by the name of the *Mannour* of S. and doth demise the same by the name of the *Mannour* of S. this is good.

If a man seized of a *Mannour*, whereto be

fix Free-holders, and fix Villaines Regardants: The Free-holders die having issue fixe daughters, the Villaines intermarry with them, yet the same is a Mannour, and the Villains there-to regardant.

If a man seised of a Mannour whereto he hath Leet and wreck of the sea by prescription, all the *Tenancies* Escheate, yet the Leete and the wreck still remain, and it is a Mannour to that purpose.

If divers do hold Land by Prescription to find the Lords mans meate, and hounds meat, when he cometh to hunt the Fox in the said lands; this maketh a good *Tenure*, but no good Mannour. If divers do hold lands to do suit and Service at the Lords Court, This is most properly such service as maketh a Mannour; but if it be to do suit and Service at the Lords Court, when it pleaseth themselves, this is neither Mannour nor *Tenure*. If divers do hold lands to repair a Highway within a mile compasse, without the bounds of the Lord of the Mannour, this makes a good *Tenure*, but no Mannour. But to repair or mend the ways within the Precinct of the Mannour, is good to enlarge the Mannour.

If divers doe hold lands to pray for the prosperous Estate of the Lord and his Heires; this maketh a *Tenure*, but no good Mannour.

If divers doe hold lands of the Lord to wait upon him at twenty dayes warning, twenty miles

miles distant from the *Mannour*, this maketh a good Service, but no good *Tenure*. But if it be to wait upon the Lord within the said *Mannour*, by certain space, this maketh both a good *Tenure* and a good *Mannour*.

If divers hold Lands to beat or kill the Lords Tenants that shall do Trespasse on the Lords *Demeasnes*, this is neither good *Tenure* nor good *Mannour*. But if it be to beat and kill the Kings enemies that shall do so, this maketh both a good *Tenure* and a good *Mannour*.

If divers hold Lands by Prescription to doe Service to the Lord, to his Court of the said *Mannour*, twenty miles distant at a place certain; This is both a good *Tenure* and a good *Mannour*. But if it be to do Service to his Court at another *Mannour*, this without Prescription cannot be service from the first *Mannour*.

If Divers do hold to come to the Lords Court, and there to do nothing, this maketh neither good *Tenure* nor good *Mannour*. But to come to the Court, though not to be of the Homage, yet to affeere *amerciements*, or make *Certificates* or any other Service to the Lord, this maketh a good *Tenure* and a good *Mannour*.

If any do hold Lands to do Divine Service before the Lord and his Tenants in the Courthouse, before the beginning of every Court, this maketh both a good *Tenure* and a good *Mannour*.

what shall be said a good Custome to be able to  
maintain a Coppy hold.

A Custome to make a Coppy-hold, must be of  
necessity in the same Manor where the said  
Coppy-holds are to granted, viz. That the same  
Lands are, and time out of mind have beene  
onely Demised, and demisable by Coppy of  
Court Role : for otherwise the Lord cannot  
grant it by Coppy, because he cannot begin a  
Custome at this day. But if it have been by  
like time granted by Coppy, though since  
it came to the Lords hands ; yet if the Lord  
never demise the same by *Free-Deed* nor other-  
wise, but by Coppy, then he may well grant  
again the same by Coppy, for it is neither the  
person of the Lord, nor the occupation of the  
Land, that either maketh or marreth the *Cop-  
py-hold*; But onely the usage and manner of *De-  
mising* the same : for the prescription of a *Cop-  
py-holder* consisteth neither in the Land, nor in  
the Occupyer, but onely in the usage.

### The Division of Customes.

viz. { Customes,  
Prescriptions,  
Usage and  
Limitation. }

The division  
of Customes.

THESE foure though they be by some con-  
founded together, and indeed are of great  
affinity ; yet there be divers differences in their  
severall natures between them.

Customes

*Custom* is where by continuance of time, a Right is obtained concerning divers persons in common.

*Prescription* is where by continuance of time one paticular person obtaineth Right against another.

*Vsage* is by continuance of time the efficient cause of them both.

*Limitation* is where a right may be obtained by reason of a *non* claime, by the space of a certain number of yeares, differing in the accompt of time, from *custome* and *prescription.*

But what measure of time shall make a *Custom*, divers have differed in opinion; some judging the same to be according to the computation of years, from the time of *K. Hen. i.* untill the Statute of *Martin cap. 3.* which appointeth the limitation in a writ of right: the accompt of which time unto the said Statute, from the said *K.* time is 76 years; others have thought a hundred yeares was accompted a Fee-simple.

But the true measure thereof according to Master *Littletons* Rule, is where a *Custom* or *Vsage*, or other things have been used, so long as mans memory cannot remember the contrary. That is when such matter is pleaded, that no man then in life, hath not heard any thing, nor know any proof to the contrary.

And by this it appeareth that *Customes*, and *Prescriptions*, rest only in the memory of man; and

and Limitation consisteth onely of a certaine time, which hath a certain beginning, and certain ending, and is not directed by mans memory, wherein is meant limitation of time, and not limitation of Estates.

If Lands have been demised by Coppy by the space of 60 yeares, and yet there be some alive, that remembreth the same occupied by Indenture, this is not a good Coppy-hold.

And if Lands have been demised by Coppy but 40. yeares, and there is none alive that can remember the same to be otherwise demised: This is a good Coppy-hold; for the number of yeares makes not the matter, but the memory of man. And it is not 60. 80. or 100 years that maketh a Coppyhold or a custome, though it makes a Limitation. But such certain number of yeares makes onely a likely-hood, or presumption of a Prescription; that is, that it commonly happneth not that anymans memory alive, can remember alone such a number of yeares. But if any chance to be alive, that remembreth the contrary, then such prescription must give place to such proof.

Custome hath certain speciall vertues in it self, which for the more estimation thereof, I will shortly shew according to certain precepts and principles allowed by all Lawes, both by the Law of God, the law of Nature, and the law of Nations, and by the private law of every Countrey: as by the Law of God it is  
said

said, *Si quis videtur contentiosus esse, non talem Consuetudinem non habemus nec ecclesia Dei*; which proveth that the Scripture and the Church of God do attribute somewhat to good customes, though not to evill; and by the Law of Nature, *Consuetudo est altera natura*. And by the Law of Nations, *Consuetudo est optima legis interpret*. And by the Lawes of this Realme, Princes at their Coronation are sworn, as well to keep the Custome of this Land, as the Law of this Land, which Law doth attribute so much to custome, that sometimes it is admitted to derogate from the Common Law; for *Consuetudo bona de causa usitata & approbata, privat communem Legem*.

*Whereof Custome doth consist.*

**C**ustom although it doth chiefly consist of continuance of time and usage, yet it doth further require seven other necessary properties, incident for the maintenance of a good Custome: Which are these.

First, it must be reasonable, as it appeareth  
2.Ed.4.24.

Secondly, it must be certain, as appeareth  
3.Ed.3.13.Ed.3.4.

*Dum fuit infra etatem.* 3.14.Ed.3.4.14.H.4.

Thirdly, it must be according to common  
right. 41.Ed.3.4.

C

Fourthly,

4. Fourthly, it must be on good consideration  
3. Hen. 7. 9. Bro. tit. *prescript.* pla. 57. 22. *Assi*  
pla. 58.
5. Fifthly, it must be compulsory. 42. Ed. 3.  
Avow. 66.
6. Sixthly, it must be without prejudice to the  
King. 3. Hen. 6. 13. *Prescription.* *Fitz.* 1. 22. Ed.  
3. *Prescription* 40.
7. Seventhly, it must be to his profit that claim-  
eth the same. 31. Ed. 3. *Prescription* 40 & 28.

*usage the  
best of  
land and  
prescription!*

Usage is the efficient cause, both of Custom and Prescription; for without Usage, there can be neither custom or Prescription; for even as the mind is to man, so is usage to custom. And as you see there be divers varieties of minds in men, so are there many varieties of customs; as you see varieties of Countries, and yet all men perfect, and all customs perfect: some say that men have their minds affected according to the constitution of their bodies: And so have Countries their Customs, according to the constitution of the places; as in Kent, and in North-wales, because those Countries have been most subject to foreign invasions, (that every man there, may be of power for resistance,) the inheritance for the most part descends in *Gavelkind* (*viz.*) to every brother alike; but in the middle parts of the Realm for whose government *last equality is best*, the inheritance wholly descendeth to the eldest brother: And in *Borough English* which



is in divers *Boroughs*, because their substance commonly is lands; and in such *Townes*, lands may be better preserved then goods; therefore their youngest sonnes shall onely have their lands: and as it is in those great parts of the Realme, so it is in divers private parts and Mannours, and divers private and speciall Customes, as some Mannours have Coppy-hold of inheritance, some for life or lives: in some Mannour the Coppy-holders surrender in one manner, and in some in another sort: In some the Fine is arbitrable: and in some certain, *et sic in similibus.*

The usage of every Custom doth not rest to be yearly, daily, or continually used, but as the equality and the nature of the thing whereof the Custom is, doth require, as custome *Harejays* when they fall, of *Shads* and *Foldrige* in their season, of *Common* of *Flowers* in their time, and for Coppyholders whose Fines are certain, yet at one time to pay a greater Fine than at another, and all these are good Customs though they cannot be used at all times; for Customs may be sometimes used, sometimes not used, some times altered, and sometimes not, and therefore in custome you may see there is (*usus, non usus*.) *Abuser*, and *Interuser*.

*Vser* is, when according to time and occasion a custome is used.

*Non Vser* is when for want of time and occasion, or through negligence, or forgetfulness

a *Custom* is not used.

Abuser is that, when *custome* is ill used; for as Vser doth nourish *custome*, so doth Abuser destroy a *custome*; and yet in some cases a *custome* may be sometimes used in one sort, and sometimes in another; and yet a good *custome*, if there be good considerations of the exchanging thereof at times, and this I call Interuser.

If there be a *Coppy-hold*, of an ancient Demesne, and this Land is forfeited to the Lord by waste, and thereupon a seisure awarded thereof, and yet the Lord doth suffer the Tenant still to occupy it, by the space of 20 years, without receiving any Rent for the same, and after grants the said land to the Tenant by *coppy*: this Grant is good, and a good Vser of the *Coppy-hold*. But if after the said Seisure awarded, an *Estranger* had entred, and disseised him of his land, and made a *Feoffment* in Fee thereof; and after the Lord re-entred, and grants the same again by *Coppy* unto the first Tenant, this Grant is not good, by reason of the Vser of this land.

If the Lord have used at the admission of his *coppy-hold Tenants* sometime to take for a Fine two-pence, or sometimes foure-pence for an Acre, sometimes twelve pence an Acre, this Vser is so uncertain, that it maketh the fine arbitrable at the Lords will.

If the Lord of a Mannor have used time out of mind

mind to admit his *copy-hold Tenants* without Fine, this usage shall bind the Lord, as well as a Fine certain.

If the Lord have used to have certain workdayes of his Tenants, and that hath not beene used by the space of twenty yeares last past; yet that non-user is no discharge to the Tenants, so that there be any in life that can remember the same.

If the Tenants have used when they sow their lands, to pay the Lord Rent-corn, and when it lyeth in pasture to pay their Rents in money, this is a good Inter-user.

If the Tenants have used to pay to their Lord every fourth year a double Rent, and every sixth yeare an half Rent, this is a good Inter-user.

If the Tenants have used to have Common of Pasture in their Lords Woods, for their Horse-cattell, and they put in their Neat-cattell, and destroy the Woods, this is an Abuser. But it is but Fineable, and no forfeiture of the Common, which they might have rightfully used: No more then if they have Common for a certain number of beasts in the Lords Soyle, and they will exceed the number; this abuse by their surcharging, is onely fineable, and no Forfeiture.

If a man have a Market to be used one day in a week, the non user thereof is not forfeit ure. And if a man have a market to be used on the Friday, and he keepeth the same Friday and

*Monday*, the Mis-user of the *Monday* is no forfeiture of the *Fryday*.

If a man have a *Faire* to be used two dayes, and he keeps it three dayes, this abuse is a forfeiture.

If a man have a *Faire* for one day, and he will keep it two dayes, and that is presented to the *Parchquer*: if the party being called by *Processe*, doth claim both dayes by Patent, upon sight whereof it appears he ought to have but one day by his Patent, and the other by prescription be found against him, and that Day lost, yet he shall enjoy the other day.

If a man prescribe to have a *Faire* yearly upon *Bartholmew* day, and if the same do fall out on the Sunday, then to keep the same the next day following, this is a good *Prescription*.

If the King do grant to the Citizens of *Normich* the *Franchises* and *Liberties* that *London* hath, and the *Franchises* and *Liberties* that *Southampton* hath: if the Citizens of *Normich* do abuse one of these *Liberties* that *London* hath, this is a forfeiture of all those *Liberties* that *London* hath, and of no other. But if the King doth incorporate a *Towne*, and give them by the same Patent *Speciall Franchises* and *Liberties*, the abuse of the one of these is a forfeiture of them all.

*That*

That every Custom must be reasonable; and  
what shall be said of reasonable Customs.

EVERY good custom is grounded upon good Reason, and that shall be said in Reason a good Custom, that in reason is a good Law; for Law and Custom be of that affinity, as both doth allow like Reason, and both do forbid like inconveniences. And the finall effect of both is to discusse & to discern every mans true right, and to give to every man that which is his own. For although Custom in some cases differ from Law, and doth admit execution of some Acts without some ceremonies and circumstances required by the Law: yet the end and effect of Custom is to maintain the like reason that Law doth, and to avoid the like inconveniences.

And therefore if a Lord will prescribe to have such a Custom within his Mannour, that if the Beasts of any of his Tenants do him any Trespasse upon any of his Demesnes, and there be taken damage feasant, that then he may detain them untill the owner shall satisfie him for his harmes, as himself shal require. This is no reasonable Custom that he should be his own Judge. But to prescribe, that if any of the Cows Holders beasts Trespass, &c. and the same be presented at his Court, that there should be a forfeiture of his Copy hold, this may be called a reasonable Custom.

¶ If

If Tenants of a Mannour will *Prescribe* to hold without paying any Rents or Services for their Coppy-holds, this is no good Custome. But to *prescribe* to hold by Fealty for all manner of Services, is good and reasonable.

If the Lord will *Prescribe* never to hold a Court, but when it pleaseth himsele, this is not good. But to *Prescribe* never to hold a Court, for the speciall good of any one Tenant, except the same Tenant will pay him a fine for the same, is good and allowable.

---

*That every Custome ought to be certain; and what shall be said a Custome certain.*

**T**Here is nothing more required in all Laws and Customes then certainty; for incertainty in all Cases makerh confusion, and therefore Law and Customedo also agree in this point, that without some kinde of certainty, neither *Law* nor *Custome* can be good: for in divers cases where one thing may be taken to divers intents, and the circumstances of the case such as to which intent the thing was done, cannot be certainly judged, there the same thing so doubtfully done, shall to all purposes be judged void. And incertainty of Customes and Customary caules grows chiefly three manner of wayes. That is to say, sometimes of the incertainty of the Persons: Sometimes the

the incertainty of the things, and sometimes the incertainty of the cause : and in some of these cases, though there be at first a Semblance of incertainty, yet by circumstances and Contingents, the Incertainties may be turned into Certainties. As if the Lord of the Mannour wil prescribe, that whensoever any of his Coppyholders dye without Heirs, that one other of the Coppy-holders of the same Mannour shall Till the Land for the yeare following; This is no good Custome, because the intent neither is, nor can be certain, which of the Tenants shall perform this Service.

But if the *Custome* be, that if a Coppyholder dye without Heire, that then the eldest Tenant of that name, of the said Mannour, shall have this Land; this is a good *Custome* and containeth in it self sufficient certainty.

If a Coppy-holder do Surrender two Acres of Land into the Lords hand, the one to the use of *I. S.* and the other to the use of *I. N.* and doth not name in Certainty who shal have the one Acre, and who shall have the other, the limitation of this Use is void, for this incertainty.

If a Coppyhold be surrendered to the use of *I. S.* and his Heires, untill he shall marry *A. G.* and after the said marriage, then to the use of them two in Tail speciall, if after they do marry, then is the Surrender to them in Tail; and till then, to him in Fee.

D

D

H

If the Lord will prescribe to have of his Copsy-holders in the time of Peace two pence an Acre of Rent, and in the time of Warre foure pence an Acre of Rent, this is good *Prescription*, because there is a good consideration of the cause of this Incertainty: But to pay unto the Lord two pence an Acre Rent when he will, and 4.d. an Acre Rent when he will, this is no good *Prescription*, because there is neither good reason, nor good consideration hereof nor can it ever be reduced into any Certainty.

*That Custome must be according to Common Right: And what shall be said such a Custome, and what not.*

42. E. 3. 4.  
Avenry 66. 14.  
Hen 4. Avenry  
Fitz. 60.

CUSTOMES and Prescriptions must bee according to common Right, that is to prescribe to have such things as is their right and reason to have, and not by custome of Prescription to claim things by way of extortion, or thereby to exact Fines or other things of his Tenant without good cause, or consideration.

If the Lord will prescribe to have of every of his Copsy-holders, for every Court that shall be kept upon the Mannour, a certain sum of money; this is no prescription according to common right, because he ought for Justice sake to do it gratis.

And



And so it is if the Sheriffe will prescribe to have a certain Fee, for keeping his Turn, this is not a good Prescription.

But if the Lord will prescribe to have a certain Fee of his Tenants for any extraordinary Court purchased only for the benefit of one Tenant, as for one Tenant to take his Coppyhold, or such like, this is a good prescription according to the common right.

If the Lord will have any of his Tenants that shall commit a Pound Breach, a hundred shillings for a Fine, this is a good *Prescription*, but to challenge of every stranger that shall commit a Pound Breach a hundred shillings, this is no good Prescription.

Com. Little;  
pla. 21, 26.  
Tuxley 5. H. 5.  
19 B. 2. R. 3. 16.  
13. Hen. 7. 16.  
D. St. 47. 2.  
Ed. 4. 17.

If the Lord will *Prescribe* that every of his Coppy-holders within his Mannour that shall marry his Daughter without licence shall pay a Fine to the Lord; this is no good *Prescription* according to common right.

---

That a Custome must be upon a good Consideration, and what shall be said such a Custome, and what not.

Consideration hath a great effect in all Laws and Customes, and hath as great an operation, as any one thing belonging to the Law, for in most causes it onely guideth and directeth Rights, Properties, Uses and Estates,

D 2

some.

sometimes according to the limitation, and sometimes contrary to the limitation, as well in cases of *Custom*, as in cases of Common Law; for Consideration is the beginning of all Custom, the ground of all Uses, the reason of all Rights, and the cause of all Duties: For without Consideration no Custom can have continuance; nothing is wrought by any Conveyance, no interest transferred, no right removed, no property changed, nor duty accrued. As if the Lord of a Mannour will prescribe, that whosoever passeth the Kings high way, which lyeth through his Mannour, shall pay to the Lord of the Mannour twelve pence for his passage, this prescription is not upon good Consideration: But if he prescribe to have a penny of every one that passeth over such a Bridge, which the Lord of the Mannour doth use to repair, this is a good Prescription, and upon good consideration. If the Lord will prescribe to have a Fine at the marriage of his Coppy-hold Tenants, in which the Custom doth not admit the husband to be Tenant by courtesie, nor the Wife to be Tenant in Dower, or have her Widdows estate; the prescription of such a Fine is not good: But in such Mannour where the Custom doth admit such particular estates, there a prescription for a Fine at the marriage of his Coppy-holders, is upon good consideration.

If

If a Coppy-holder surrender his Land to the use of I. S. so long as I. S. shall serve him in such an office; if I. S. refuse to serve, his estate doth cease.

If a Coppy-holder doth surrender his Land to the use of a stranger, in consideration that the same stranger shall marry his daughter before such a day: if the marriage succeeds not, the stranger takes nothing by the Surrender: But if the Surrender be in consideration that the stranger shall pay such a sum of money, at such a day; though the money be not paid, yet the Surrender standeth good.

If the Coppy-holder in consideration of twenty pounds to be paid by I. S. doth make a Surrender of his Land to N. R. this Surrender is to the use of I. S. because of the consideration expressed in the Coppy, and not to the use of N. R. But if in the Coppy the use be expressed to N. R. and no consideration mentioned, the use expressed shall stand against any Consideration to be averred.

---

*That a Custome must be compulsory; and what shall be said a Custome, and what not.*

**C**ustome or Law must be *Compulsary*, and not at the liberty of a man, whether he will perform it or not; for then it were of no force; for all Customes and Lawes have their effect.

effect in two points. That is, in bidding that which is just, and in forbidding the contrary: So that the Lawes and Customes are refrainers of Liberties, and do demand execution of Justice; not that every man should have or do what they would; but that which by Justice they ought, whereunto by duty of Law and Custom, he is compellable; for otherwise it were Voluntary in him, which were to the infringing the Law and good order: As the Poet,

*Oderunt peccare boni virtutis amore.*

*Oderunt peccare mali formidine pœnæ.*

If the Lord will *prescribe* that every of his Tenants shall give him ten shillings a moneth, to bear charges in time of Warre; this is no good *Prescription*. But to prescribe that they ought to pay ten shillings a moneth, &c. this is good. For payment is *Compulsary*, but gift is *Voluntary*.

If a Coppy-holder do Surrender his Land to the use of *I.S.* so that the said *I.S.* do pay him twenty pounds at such a day, If *I.S.* please to pay the same, this is an absolute Surrender, and not conditionall, because the payment is *compulsary*.

But many Customes there are which at the beginning were voluntary, and now by continuance are grown *compulsary*. According to the Civil Law, *Quæ initio fuerunt voluntariis,*

*ex post facto fuerunt necessitatis*; which also agreeeth with the Common Law in many cases, as I have partly touched before.

*That a Custome must be without prejudice to the King, and by what prescription the King shall be bound, and by what not.*

THE King hath that Prerogative over his subjects, that he is not tryed to time as a common person is; for though a common person may lose his right by non claime within a certain time, the Kings right is still to be preserved; for *Nulium tempus occurrit Regi*. Yet in speciall cases where the King is not Intituled against such prescription by matter of Record, these such Customes shall bind the King.

As for example, if a Coppy-holder prescribeth that he holdeth of the King by Coppy, this is good, and by Fine certain, and not arbitrable: to have Waife and Strayes, and Wreck (but not *Catalla Felonum aut fugitivorum*,) and *Vilagatorum* without Charters.

The Kings *Admonsion* shall never fall into lapse for not presenting within sixe Moneths.

*That*

*That a Custome ought to consist of perdurable-  
nesse of Estate, and of an  
able Capacity.*

TO those former parts whereupon I have declared a good Custome to consist, may be added two other parts; *viz.* That he which will claim by Custome, must have a sufficient and perdurable estate to *prescribe*; and also in his own right, or in some others, a sufficient ability or capacity to *prescribe*.

Touching the first it is to be understood that he which will *prescribe*, must have a certain and undefeazable estate, and not otherwise. As if a Tenant at Will, or at Sufferance, after he hath occupied the Land for ten years will *prescribe* to have the same for ten years more, this is not good. But a Tenant at Will after the Custome, although he came in at the first by the Lords Will, yet doing and paying that which he ought, he may *prescribe* to hold the Land whether the Lord will or no: and although a Coppyholder may *prescribe* in this forme against his Lord, yet against an Estranger, for a common or such like kind of profit, he cannot *prescribe*, but in the right of the Lord: neither yet can a Tenant for life, or for yeares, *prescribe* in the right of their own Estate onely, because it lacketh continuance to make a *Custom or Prescription* (except) in some cases

Cases of necessity, the Lord of a Mannour, or of a patronage for yeares or life, may grant a Coppy in perpetuity or *presenation* for a longer time than the estate of the Grantor doth continue, and this is admitted *causa necessitatis*, and not *jure prescriptionis*.

To the second, Capacity must be in himself that doth *prescribe*; which ability and Capacity must consist in the person of him that doth *prescribe*: For as *prescription* may be sometimes in respect of estate, Mannour, Lands or Offices; so may *prescription* sometimes be in respect of person, which person is not to be understood of a private person, but of a body Politick; not that many persons may *prescribe*, except the same be incorporate; and to *prescribe* in respect of their incorporate capacity, and not in respect of their private capacity. As if the Inhabitants of Dale will *prescribe* to have Common in the Soyl of S. this is no good *prescription*, for that they be not incorporate; they must *prescribe* that M. Lord of the Mannour of Dale, for him and his Tenants within the said Mannour, have used to have Common within the said Soyle: so it is for Coppy-holders, for they must *prescribe* in the name of their Lord in such a case.

If a man *prescribe* that he and his Ancestors have had such an Annuity, this is not good: But if a Bishop do *prescribe* that he and his Predecessors have had such an Annuity, this is good.

E

The

*Galewayd*  
*prescription*

The pleading of *Prescription* must be used in form of Law, as other matters that are pleadable, and form must be used (likewise) in pleading of *Coppy-holds*, and other Customary Titles for avoiding of confusion and discord, as well as in other cases of the Common Law, the form of pleading *prescription* doth differ as the quality of the thing, whereof *prescription* is made, and sometimes doth differ, as the persons do differ which make the *prescription*: As if a Coppy-holder makes his Title to his Land by *prescription*, he must plead that the same Land is and hath been time out of mind *demised* and *demiseable*, by the Coppy of Court-rol, according to the custome of the *Mannour* whereof it is holden.

If two men as younger brethren will make their Title to Land in *Gavell-kind*, they must say, that the same Land is of the *Tenure* and Nature of *Gavell-kind*, which time out of mind have been parted and partable between Heires males.

So if the youngest Sonne make his Title to Land in Borough English, he must plead, that time out of mind, the *Customs* of the said *Mannour* hath been, that when, or at what time soever a Coppyholder dyeth *seised* of any Coppyhold Lands in the same *Mannour*, having divers Sonnes, that the same hath used *Inter Hereditario*, to descend unto the youngest Sonne, &c.

And



And as the forme doth differ in the things whereof the *prescription* is commonly made, so doth it differ as the persons do differ. He which doth *prescribe* as a private person, shall *prescribe* in him and his Ancestors whose estate he hath. An incorporate person in him and his Predecessors. A Lord of a *Mannour* in him and them which were Lords of that *Mannour*.

A Sheriffe, in him and those which have been Sheriffes of the same County.

A Steward of a *Mannour*, in him and those which have been Stewards there.

A Free-holder, in him and them which have been Freeholders to the said Lord.

A Coppy-holder, shall *prescribe* against an Estranger, that the Lord of the Mannour, for him and his Tenants at Will have used the like, &c.

*What Necessity a Court Baron is of, whereof it doth consist, how it is defined, and what shall be said a sufficient Court Role to make a Coppy-hold.*

Every Mannour hath a Court Baron incident to it, of common right, and common necessity, and this Court Baron consisteth of foure speciall parts, viz. the Lord, the Steward, the Tenants, and the Bayliffe.

A Court Baron is defined to be an assemblie

E 2

of

*A Court Baron  
is incident to every  
mannour.*

of these parts together, within the said Mannour to take Councill, Care and enquire of causes concerning the same Mannour: to see justice duly executed, the acts and ordinances there done to be recorded in the Roles of the same Court, which Roles are the Evidence of all ordinances, duties, customs, and conveyances between the Lord and Tenants of the said Mannour, and are to be entred by the Steward or an Officer indifferent between the Lord and his Tenants, and the same Roles to remain with the Lord, thereby to know his Tenants, his Rents, and his Fines, his Customs, and his Services.

And the particular Grant of every Copsy-hold, to be copyed out of the Roles, the Coppies thereof to be delivered to every particular Tenant, neither can they make any other Title to their said Tenements, but by their said Copsy.

If the Lord of the Mannour having Copsy-hold Lands surrendred into his hands, will in the presence of his Tenants out of the Court, grant the same to another, and the Steward entereth the same into the Court-Book, and maketh thereof a Copsy to the Grantee, and the Lord dye before the next Court, this is no good Copsy to hold the Land:

But if the same Surrender and Grant bee presented at the next Court, in the life of the Lord, and the Grantee admitted Tenant, and a Copsy made to him, this is a good Copsy.

If the Lord of a Mannour having ancient Copsy-hold

py-hold in his hands, will by a Deed of Feofment, or by a Fine grant this Land to one to hold at the will of the Lord, according to the Custome, yet this cannot make a good Coppy-hold.

If the Lord in open Court doth grant a Coppy-hold Land, and the Steward maketh no Entry therof in the Court Roles; this is not good, though it be never so publicly done; nor no collaterall proof can make it good.

*the copy  
is bound  
in the  
book*

But if the Tenant have no Coppy made unto him out of the Role, or if he lose his Coppy, yet the Role is still a sufficient Title for his Coppyhold: if the Role be also lost, yet it seemeth that by proof he can make this good.

If Ordinances or By-Lawes bee newly made, and Recorded in the Roles of the Court, if the Court Roles be lost, the By-Lawes bee set at liberty; yet if there bee any ancient Customes or Priviledges by *prescriptions* not entred in the Roles, &c. though the Roles bee lost, yet they remain good;

*Who shall be sayd such a Lord of a Mannour as hath power to grant a Coppyhold.*

A Lord to grant or allow a Coppyhold, must be such a one as by *Littletons* Definition is seised of a Mannour, so that he must bee in possession at the time of the Grant; for although

he have good right and title, yet if hee bee not in possession of the Mannour, it will not serve: and on the other side, if hee bee in possession of the Mannour, though he have neither right nor title thereunto, yet in many Cases the Grant and Allowance of such a Coppy is good as *Dominus de facto, sed non de jure*. And in some Cases a Coppyhold shall bee adjudged good, according to the largenesse of the state of the Lord that granted the same, and in some Cases shall continue good for a longer time than the estate of the Grantor was at the time of the Grant. But that is to be understood in case of necessity, otherwise it will not be allowed.

If a man seised of a Mannour, in which are divers Coppy-holds demisable for Lives, is disseised, and the Disseisor granteth a Coppyhold, being voyd, for three Lives; this is not good to binde the Disseisee, otherwise it is of a Coppy hold of Inheritance, because it is necessary to admit the next Heire.

If a man have a Title to enter into a Mannour for a condition broken, and he granteth a Coppyhold of the same Mannour (being voyd) at a Court-Paron, this is a good Grant; for the keeping of the Court amounteth to an entry into the Mannour.

A man seised of a Mannour for life, whereunto be Coppyholds of Inheritance belonging, and one Coppyholder surrendreth to the Use of a Stranger in Fee, the Lord may grant this

this in Fee, and this Grant shall binde him in the reversion; but the Coppy-holds being demisable for lives, if is otherwise; for then he cannot upon Surrender grant the same, longer then the life of the Grantor. But if the Lord of a Mannour for yeares, or during the minority of a Ward, of which the Coppy-holds are demisable for three lives successively, and not survivingly; in this case if the Copdholder dyeth, the Lord may grant the same; being void for three lives at his pleasure, and this shall bind him in the Reversion, or the Heire at his full age.

*Who shall be said such a Tenant as may  
be a Coppy-holder.*

**A**lthough there seemeth some shew of difference between Coppy-holders and Customary Tenants, yet differ not they so much in nature, as in name; for although some be called Coppyholders, some Customary, some Tenants by the Virg, some base Tenants, some bound Tenants, and some by one name, and some by another; yet they do all agree in substance and kind of Tenure, though they differ in some ceremonies and kind of serving, and therefore the name is not the matter, but the Tenure.

He shall be said a person sufficient to be a  
Coppy-

Infant feme  
Covert. *Luz-*  
*tick Nemy* 13.  
*Eli* 362. & 303

Coppy-holder, who is of himself able, or by another to do the service of a Coppy-holder; as an infant may be a Coppy-holder for his Gardein, and Prochein any may do the service; so may a feme Covert, and her husband shall do the service: But a lunatick, or Ideot cannot be a Coppy-holder, because they cannot do the service themselves, nor depute any other: and the Lord shall retain the Coppy-hold of an Ideot and not the Queen.

A Bond-man or alien born may be a *Coppyholder*, and the King or Lord cannot seise the same.

But a man cannot be a *Coppy-holder* unto a Mannour whereof he himself is Lord, although he be but *Dominus pro termino annorum*, or *in iure Vxoris*.

*What shall be said* such Lands or other things as are demisable by *Coppy*, and may be holden by *Coppy*.

IT may be said of *Coppy-hold* Lands, as is afore-said of the Tenants, they may differ in name, but not in nature: as some are called *Coppy-held* Lands, some Customary Lands, some bound Lands, some base Lands, some ancient Lands, some demesne Lands, some encrease Lands, some Mollends, some waste Lands, some work Lands, some loose Lands, and some Veirg Lands. And although *Coppy-hold* Lands be specially

ally so called, because it is holden by Coppy of Court Role; Customary Lands because of some speciall Custome; Bond Lands because of the Bond Tenure, Base Lands because of Base Tenure, Ancient Lands because of the old Demise, Demeasne Lands, because of its new Demise, and late being in the hands of the Lord of the Mannour; Increased Lands, because it is late purchased, and laid to the Mannour: Mollands, because it is holden by easie Rents, or no Rents at all: Waste Land, because it hath been lately improved out of the waste of the Mannour: Work Lands, such as hath common appendant belonging to it: Lose Land, because it is holden by uncertainty of Rents; and Veing Land, because it is holden by the Veinge: Yet all the said Lands are holden in one generall kinde, that is by Custome, and continuance of time; and the diversity of their names doth not alter the nature of their Tenure.

It seemeth by *Littleton*, that onely Lands and Tenements are demisable by Coppy. And therefore if the Lord of a Mannor will grant the Rent charge, or the Office of Stewardship, or Baylywick of his Mannour, by Coppy, or a Common in grosse by Coppy, these be not good Grants, because they lie not in Tenure, and also because the *Custome* doth not extend unto them, but common appendant to a Tenement or Coppy. hold Lands may be demised with the Tenement by Coppy.

**Demeasne Lands** which within time of memory have been occupied by the Lord himself, or his Farmor, is not good to be granted by Coppy, because of the newnesse of the Grant; yet by continuance of time it may be good Coppy hold, when the memory of the contrary is worn away, as hath been said before. Neither can the Lord that granted such a Coppy, put out his Coppy-holder during his life that granted the same, because he should not be conceived to dis-able his own Grant. If a Coppy-holder do surrender his Coppy-hold into the Lords hands, meerely to the use of the Lord, I doubt whether the Lord may grant this again by Coppy, as he may where it comes unto him by forfeiture, or by escheat, because it is made parcell in Demeasne by his own acceptance, and not by the Act of the Law. *Quere.*

Note that neither the Statute of *West 2. de donis conditionalibus*, nor any other Statute, that hath not Coppy-holds named in it, doth extend to Coppy-hold Lands, as the Statute *Staple 27. Ed. 3.* nor the Statute of *Heretic 2. Hen. 5.* nor the Statute of *Wills 32. Henry the eight*, nor the Statute of *Limitation*, made the same year, as is now taken contrary to *Master Brook in novel cases. 436.*

But though a gift in Tail of a Coppy-holder, be not contained in the same Statute of *West the second*: Yet I think in such Mannour, where time out of mind they have used to make gifts in



in Taile of Coppy-hold *Lands*, there such gifts be good at this day, and they may make Protestation in the nature of any Writ, as appeareth by *Littleton*.

---

*What shall be said a good Surrender.*

**A**S in the conveying of Free Lands there is required some ceremony and publick notice, so is there in the assuring of Coppyholds necessarily some publick fact to be done therein, which is the Surrender. In which ceremony there is contained two effects, the one what is surrendered and to whose use; the other that it be done with the Lords good will, and for what cause it is surrendred into his hands. And although there be divers wayes of Surrender in severall Mannours, as within some Mannours to surrender by the hand of another Coppyholder, and in some other to surrender to the Stewards hands, in some to the Bayliffes hands, and some by giving a yard to the Steward, in some by giving his hand, or his glove, which be outward signes of his intent: Yet in all these kinds the words of Surrender must not be divers, but one, and to one effect, and must be either words of Surrender expressed, or words of Surrender implied; and therefore if a Coppy holder will bargain and sell his Land to *I.S.* and this is found by the Homage, and *I.S.* prayeth to be admitted

ted Tenant, yet the Heire of the Coppingholder shall avoid the admission, because of the insufficiency of the Surrender, taking by the words of Bargain and Sale, and not by words of Surrender *opi. Sigr. Dier 8. Eliz. Folio 251. Lou ill dit. que reless ne vault inure Come une surrender.*

If a Coppingholder cometh into the Court, and desireth his Lord to admit his Sonne to be Tenant in his Fathers place, this seemeth a good Surrender to the use of the Sonne.

If a Coppingholder will in the presence of other Coppingholders of the same Mannour, say that he is content to surrender his Coppinghold Lands to the use of *I. S.* this is no good Surrender: but if he saith he doth surrender into the hands of the Lord to the use of *I. S.* if the Lord will thereunto agree, this is a good Surrender, whether the Lord will or not.

If the Tenant will resigne his interest in the Court, into the Lords hands, therewithall for the Lord to do his will, this is a good Surrender if it be accepted.

If a Coppingholder will say he will be no longer the Lords Tenant, though these words be recorded, yet this is no good Surrender.

If a Coppingholder for life, take a new Estate for life by Copping, this is a surrender of his first Estate.

But if a Coppingholder for life will take a Lease of the same by Indenture for life, this is not a good surrender of the Coppinghold. *Quare.*

If

If a Copyholder cometh to the *Lord*, & telleth him, that for the preferment of his Son, in marriage, with such a mans daughter, his will is, to give his *Land* presently to his Sonne, and desireth the *Lord* that he would be contented therewith, this is no good surrender.

But if he had said these words in the *Lords* Court, and the same recorded, or found by Homage as a Surrender, and so presented, then this had been a good Surrender without any other words of Surrender.

---

*That a Copyholder must be admitted Tenant; and what shall be said a good admittance of a Copyholder.*

**I**F a Copyhold descend unto a married woman, and her husband take the profits thereof, and suffer a Court day to passe without admittance of his Wife, and then the Wife dyes, the Husband shall not be Tenant by the courtesie; but in the 12. *Eliz. Dier* 291. 292. it seemeth that the contrary should be the better opinion.

An entry before admittance is no forfeiture, without an especiall Custome pleaded, but the Heire may make a forfeiture for non payment of the Rent, as the Custome was there pleaded before admittance.

By Sergeant  
Walmsley.

12. *Eliz.* 291.  
292.

10. *Hen. 8. Dier.*  
42. 16. there.  
*Grants case.*

If

If a Coppyhold be surrendred unto the use of a stranger upon condition, and the condition be broken, the party that made the Surrender may reenter, and be a Coppyholder to all intents, without any new admission; for he did depart with the *Land* upon a condition.

Also if a Surrender of a *Coppyhold* be made to the use of a stranger for life, and the *Lord* makes a Grant thereof to the same stranger in Fee; this shall not bind the Heire of the Tenant, but that he may enter after the death of the Grantee; for he took the *Land* by the Surrender, and not by the Grant made by the *Lord*; for the *Lord* is but an instrument for the conveyance of the *Land*; for if I make a Surrender unto the *Lord* *ea intentione*, that he shall grant over unto such a man, if the *Lord* will not grant the same, I may then reenter, but the stranger hath no means to enforce the *Lord* to grant the same over unto him, but may maintain Trespasse against the *Lord*, if he doth suffer me to reenter, and this is the Opinion at this day.

The *Lord* of a Mannour hath that Prerogative in his *Coppyholds*, that no stranger can be his Tenant thereof without his speciall assent, and admission; and for that cause a *Coppyhold* shall not be liable to any executions of Statutes, or Recognizances, neither shall be *assess*, in debt or *Formidon*, neither is contained in any the Statutes afore named, for if it were, then should the

the Lord be forced to have a Coppyholder whether he would or no, which is against the nature of a Coppyhold.

And therefore a Stranger can never enter, though a Surrender made to his use be accepted, except he be admitted Tenant; but otherwise of the Heire, for hee may enter and take the profits before the Admittance after the death of his Father.

Admittance may be three manner of wayes; an Expresse Admission, by the words entred into the Court Role, viz. *unde admissus est Tenens*; or by Acceptance, or Implication, as if the Lord will accept the Rent by the hands of a Stranger: Thirdly, by admitting one Coppyholder, in some Cases the Lord shall admit another by Implication to some purposes. And to these three may be added a fourth, which is by the Entry of the Sonne after the death of his Father; and the Tenant in Dower after the death of her Husband, which is lawfull without Admission, till the next Court, and then they must pray to be admitted, &c.

Ma Coppyholder do surrender his Land to the use of *I. S.* and the Lord doth grant the same to *I. S.* accordingly, and thereupon hee Enters, yet he is no good Coppyholder, till he be admitted. But if *I. S.* appeareth at the Lords Court, and passeth on the Lords Homage, or the Lord accepts his Rent or his Fine for the same Coppyhold, now he is become a good Coppyholder without any further Admission. If

If a Coppyholder surrendreth his *Land* to the use of *I. S.* for life, the Remaynder to the use of *R. N.* for life, and the *Lord* granteth the same accordingly, and admitteth *I. S.* it seemeth this is a good Admission to *R. N.* that is the Remaynder.

In Trespasse  
by Hagger a-  
gainst Persons  
as Rep. Browns  
Calc.

A Coppyholder in Fee dyeth seised, his heire may make a Surrender to the use of a Stranger without Admission: *quare.* But if a Coppyholder surrendreth to the use of *I. S.* this *I. S.* cannot surrendreth to the use of a Stranger, without being first admitted himselfe.

If a Coppyholder surrendreth all to the use of two joyntly, and they are admitted, if the one of them dyeth, the Survivor needeth not to be admitted again for the moiety: But if a Coppyholder having issue two daughters, and they are admitted, and then the one of them dieth, the other must needs be admitted for the other moiety, for she takes the same by descent.

*D' heire dun Coppy-holder poit prendre les profits  
auera accion de Trespas et serra possessor frater du-  
ne Coppy hold, devant ascune admittance 12. E. 1.  
Sigr. Dier 291. poit faire leases per ans, Denby et  
Bullocks ca.*

what

*What shall be said a forfeiture of  
a Copsy-hold.*

**T**HE Tenant by Copsy standeth bound by his Tenure to the Lord, that if he doth any thing to the Lords disinherittance, or in some cases if he doth transgresse the duty of a good Tenant, he shall forfeit his Copsyhold: But because all offences are not equall, so likewise there are degrees of punishment; for there is a difference between offences done wittingly, and willingly, and faults ignorantly and unwillingly committed.

And therefore some offences are forfeitures *ipso facto*, some are onely forfeitures when they are presented and not before, and some are onely fineable.

Forfeitures *ipso facto* are offences that lye in misfeasans, and be apparent forfeitures; Forfeitures that lye in *non feians*, are where the offence is not apparent, nor affirmatively to be proved without presentment.

Offences Fineable are offences of contempt, and not of disinherittance.

As if a Copsyholder will in the presence, and sitting of the Court Baron, say that the Lord doth extort and exact un-due Rents, and Services of his Tenants, or such other unreverend words; this is only Fineable.

But if he will shew and there say, being called  
G forth

forth to be sworn of his Homage, that he is none of his Lords Tenant, this makes a Forfeiture of his Coppyhold.

But if he will there say, that he will shortly devise a way that he will be no longer any of the Lords Coppyholders, this is neither cause of forfeiture, nor Fine.

If a Coppyholder *sedente Curia*, do strike another Coppyholder or any other stranger, this is onely Fineable, and maketh no Forfeiture.

If the Steward sheweth forth a Court Role to prove that *T. S.* is a Coppyholder, and this notwithstanding he will in the Court say, that he is a Free-holder, and sheweth forth a Free deed and claim thereby, and teareth in pieces the Court Role, and publisheth the Free deed, this is a cause of Fine, and Forfeiture.

But if the said Tenant will there upon some colourable doubt, and question which may arise, whether he be a Free-holder, or Coppyholder, say to the Steward, because he knows not whether the Rent that he should pay, be Free Rent or Coppyhold-Rent, he will pay it with protestation that the Rent may be recorded as it shall fall out, and with like protestation offer and do his Service, though in truth he be a Coppyholder, yet this deserveth neither Fine nor Forfeiture.

If a Coppyholder cannot pay his Rent, and will not do his Service, this offence is on the Negative, and maketh no forfeiture till it be presented.

*Tenant*



Tenant per Cople ne pot faire waite ne ceuper d'els  
par vender, mes par reparation tantum. p. Hen. 2.  
12.43. Ed. 3. 32.86. (12.43. Ed. 3. 32.86. (12.43. Ed. 3. 32.86.)

But if a Copsyholder doth Alien his Land  
by free deed, or will commit waste, or demise  
his Copsyhold contrary to the Custome, or  
will sue a Replevin against the Lord, for a Distr.  
lawfully taken for his Rent or Service due, or  
disclaim in the Land being summoned to the  
Lords Court, or will there claim it as his free-  
hold, or will in any other Court intitle any o-  
ther Lord unto it, or be attainted of Treason  
or felony, or continue out-law, or excom-  
municate, during the Lords Court, or refuseth  
to go with his Lord or other Commissioners for  
that purpose in the service of the Prince, to  
suppresse Rebels, riots, or unlawfull assemblies.  
All these offences be apparent misfeisance  
and forfeiture *ipso facto* without any present-  
ment.

But if a Copsyholder being of the Grand In-  
quest at the Assizes or Sessions, shall indite  
his Lord of any manner of offence committed  
against the Prince or Law of this Realm, or shal  
upon Proces Compulsary give evidence against  
his Lord, which is true, in any cause between  
his Lord and another Common person, or be-  
tween the Prince and his Lord without com-  
pulsary proces, or shall make any bodily arrest  
of his Lord by the Commandement of the  
Sheriffe or other lawfull authority, or shall bring  
any

wilfull misfe-  
isance  
of a Copsy-  
holder

A Copsyholder  
being of the grand  
inquest shall give  
evidence against his  
lord

any Action or Suit against his Lord in any of the Queens Courts, (except a Replevin as in the case aforesaid) All these last recited, be causes of neither Fines or Forfeitures of any Copyhold.

Also a Copyholder not claiming his Copyhold after the death of his Ancestor within a yeare and a day, at the Court if any if any be, it is a forfeiture for ever; per opin Catline, Stowells Case 372. et c. il pene. ceo des bone custome in pluri sors Mannours.

If Copyholders being on a Jury will not find the waste committed, or will not present things presentable, this is a forfeiture of their Tenures, if they be Copyholders; by the opinion of Catline, Dier, and Brooke 4. Eliz. Dier 221. pl. 31. 6. et. 7. Eliz. 233. 6. 9. Hen. 6. 44. 6.

If a Copyholder will not be sworn to present such offences as are forfeitures, this is a forfeiture of his Estate; so if he alien or make Copyhold free, for tenne pound; the Lord may enter; for they are wilfull Acts, for which the Lord may enter without presentment; But for negligent offences, as for not doing Services or not acceptance of a Copyhold after the death of his Ancestor, the Lord cannot seise without presentment of the Homage. And if an Infant within the yeare after the death of his Ancestor, will not after the Court holden and Proclamation made, pray to be admitted, it is no forfeiture.

and likeli to y<sup>e</sup> modus illud vel totum to offere up

unlesse the Custome of the Mannour be, that an Infant ought to forfeit his Estate by such negligence; for it is but a claim at Common Law, which barres not an Infant, which hath not discretion. Between *Hausrey* and *Buckshire* one of his Coppyholders. 12. *Eliz. Rot.* 96.

If thirteen Coppyholders be sworne in a base Court, and twelve agree to give Verdict, and the thirteenth will not, it is not a forfeiture; for it is a good Verdict without his assent, and perhaps it is not agreeing to his conscience, and therefore it is not properly a not doing, or deniall to do his duty.

*Quere*, If there be 12. and 11. agree, and the twelfth will not, for it is not a full Jury. *Pasche. 20. Eliz. Co. Bank. ve. 3. Ed. 3. Verdict 40. 19. Ed. 3. ibid. 45. 12. Hen. 4. 10. Shreene.*

---

*What Office or Power entirely, or dividedly  
the Lord, Steward, Free-holders,  
Coppyholders, and the Bayliffes  
have in the Court; Baron.*

**A**lthough the Lord, the Steward, the Freeholders, the Coppyholders, and the Bayliffes of every Mannour, have an intermixt and joynt office and authority in some cases, and to some purposes; yet to other purposes their office is distinct and divided, and every of them doth occupy severall places, persons, and parts.

The Lord is chief to command and appoint, the Steward to direct and record, the Freeholder to assere and judge, the Coppyholders to reform and present, the Bayliffe to attend and execute, &c.

And all these together make a perfect execution of Justice and judgements in a Court Baron; and without all these a Court Baron cannot be holden in his proper nature, in respect of all causes belonging to the perfect jurisdiction of a Court Baron.

And yet a Baron may be held by use & Custom for some Coppyhold causes, though it want one of the said parties (*viz.*) the Free-holders, and there in Coppyhold cases the Steward doth supply the place of a Judge: but no other of the parties aforesaid, except the Freeholders, can be missed or spared in a Court Baron.

But to make some more particular demonstration of the distinct authorities and offices, and first the Lord as he is chief in place, so is he in Authority, and occupieth three severall Rooms; the one of a Chancellor in cases of equity, the other of a Justice in a matter of right, the third of himself in cases proper and particular to himself.

The Steward doth occupy the parts of severall persons, that is to say, a Judge to order in cases of Coppyhold; and also a Minister, and Register to enter things into the Court Roles, and in both these to be indifferent between the Lord and his Tenants.

The

of the Lord  
to be indiffer-  
ent between  
the Lord and  
tenants

The Freeholders do likewise fulfill two parts, that is, to assere, and judge amerciaments, and also to returne and certifie judgements.

The Copsyholders also do hold two severall roomes, viz. to enform of offences committed against the Lord within that Mannour, and to present such things as shall be given in charge by the Steward.

The Bayliffe also doth occupy two parts, that is to say, to execute the proces and Commandements of the Court, and also to returne into the Court the Execution of the same Proces.

2. Ed. 6. Br. Brook No case. 84. pl. 387 the Under Steward in Court, within authority of the Lord, or of the High Steward, may demise Copsyhold and it is a good Grant; for it is in full Court; but contrary it is if it be out of Court. *Quere*, if the High Steward without authority may demise out of Court.

Tenant per  
Copy de Court  
Role Br. 16.

**Finis Lecture Calthrop.**

**A** Coppyholder being indebted, doth not surrender to his Creditor, upon trust that he shall have the *Land* to satisfie himself of the debt, and then to be surrendred back again unto him; And after the debt levied, the creditor will not surrender, whereby according to the custome of the Mannour, the Tenant pursues an English Bill to the Lord in his *Court*, by which the trust is proved by deposition: the Lord seiseth the *Land* to the use of the first Coppyholder untill &c. And *Wray* was of opinion, that he may well so do, for he hath no other remedy, for the Lord cannot imprison him, as the Lord Chancellour of *England* may doe: and that the custome of deposition is good; though some do doubt: but *Gandy* agrees, but he saith that the Lord cannot retain and keep the Land, and if he should so do, the other shall have a *Subpena*, whereunto *Wray* agreeth, that he cannot retain the Land, but seise it and grant it over, which without seising he cannot do, 25. *Eliz. B.* upon the motion of *Cook*, who said that 14. *Hen. 4. 39* and *Fitz. Nat. B. 18.* are according to their opinions: For a Coppyholder shall not have a *Writ of Error*, nor false judgement, upon a judgement against him in Court of the Lord, but he shall sue by bill, and thereupon the Lord shall rescise the Land upon false judgement given by the Steward, and shall make restitution.

If

If one recover a debt by plaint in Court Baron, those of the Court have not power to make execution to the Plaintiffe of the Defendant goods, but they may distraine the defendant, and after the judgement retain the distress in their hands in safeguard, untill the Defendant hath satisfied the Plaintiffe of that wherein he is condemned by the Court, 40. Court Baron  
*Hen. 6. 17.* See the Book of *Entrees. Fol. 116 7.* Br. 3. and Execution 87. 16.  
*Hen. 4. 27.* In Replevin the Defendant said, that one *Edward Besall* brought a Writ of *Droit* close against the Plaintiffe, and one other in the Lords Court in ancient Demeasne, and declared in nature of Assize, and it was found against the Plaintiffe, and dammages were taxed; whereby the Defendant being then under Bayliffe, by the Stewards commandement, takes the beasts for execution of the dammages, and takes an sells them, and delivers the Monies to the Plaintiffe in Assize; this is a good Plea, and yet this is but a Court Baron. And *Fol. 29. by Hull*; A man recovers ancient Demeasne Lands, and dammages in a Court of ancient Demeasne, and the Bayliffe may take the Beasts of him against whom the Recovery is, &c. for execution of Damgages in every parcell of the Land holden of the Mannour, although that Land be Frank-fee, and it is not denied 22. *Assise 72.* agrees with 4 *Hen. 6. Mr Kitch. 115.* where it is used to make Execution by *levari facias*, that is a good  
H Custome.

Custom. 38. Ed. 3. Custom 133. upon a recovery in Court Baron, the Defendants Cartell were delivered in execution.

---

*Where a Tenant by Copsy may plead a special Custom, which is onely proper to him, and his Predecessors before him.*

**N**inth Eliz. Taverner was sued by the Lord Cromwell, for that he had committed waste upon his Copsyhold; he pleads by the advice of *Manwood*, that he and those who before him had the house wherein he dwelt, had such a Custom by Prescription, that they might fell Timber-trees, &c. And many arguments were against that Custom, in as much as other Tenants of that Mannour, had not such a Custom, but were punishable and had forfeited their Lands for such waste; also that Custom was against common right, and not reasonable; and after long deliberation of the Iudges, it was adjudged, that a Tenant may plead a particular Custom, as if one prescribe to have a way in the Lords Land, &c. And 19. of *Eliz.* one prescribed that he and those of that Tenement his Predecessors had used to have common of Estovers in another Mannour, notwithstanding that the other Tenants have not such a Custom, and it was good by the advice of all the Iustices.

*where*



*Where the Tenant may cut down Trees and  
destroy houses by Custome, and such  
like Customes, &c.*

**F**ourth Ed. 6. Justice Dallisons Reports, Sanders, and divers Iustices; Tenant by Coppy of Court Role may prescribe to have Wood growing upon the Land. *Montague*, There is such a Custome, and so used in the Countie of *Mid.* Northland and other places. *Browne*, It hath been here agreed of late, that Tenant by the Custome may prescribe to suffer their houses to fall, and to destroy their houses; so also here, whereby this is a good Custome. *Montague*, I have heard a Fable, that a Tenant by the Custome may digge in the one part of his house, and burn the other part, by the Custome: But if you will agree that the Tenant by Custome shall have the Land against the Lords Will, to him and his Heires by the Custome; why then may they not by the Custome cut down Wood? *Sanders*, I agree to none of your Cases. *Montague*, surely in the *Chancery* it will be over-ruled against you without doubt, and it is necessary that an Act of Parliament be made upon it.

*Where and how Tenant by Coppy may make a  
Jointure to his wife of the  
same Land.*

A Stranger brings a Writ of right against the Husband and Wife, in the same Court where the Land is by plea, and the Husband and Wife do appeare, and the Demandant doth Count against them, and the Husband and Wife do defend, and say that they have more right then the Demander, and offer to try it by Battell; and the Demander and Tenants do imparl, at which day the Demander appears, and the Husband and Wife make default, whereby finall judgement is given against them; and at the same Court the Recoverer surrenders the same Land into the Lords hands to the use of the Husband and Wife, and the Heirs of their two bodies begotten: and it was said that this Assurance hath been used. 1. Ed. 6. *Dallisons Reports.*

*Polet: Hikden Trin. 36. Eliz. Rot. 547.* in the Kings Bench: Tenant in Tayle, the remainder in fee; Tenant in Tayle surrenders to the use of *I S.* in Fee; *I. S.* suffers a Recovery, and vouches the Tenant in Tayl, who vouches the common Vouchee, and by speciall Verdict it was found that there was never any Recovery before in that manner, and it is not yet adjudged, *Gawdy* and *Clinch*, that the Recovery can-

In Monsieur  
*Wiers Reports*  
whether a re-  
covery in  
Court Baron  
may defeat an  
Entail B. Regis  
2. Comment, 21.

cannot be a Barre; for warranty cannot be annexed to an estate at will; also he shall not recover in value, because of the estate at will. *See the first part of the Institutes fol 60. largely argued, and many Authorities cited.*  
*Fenner and Popham* Chief Justice to the contrary, and that warranty may be annexed to Coppyhold Land, though it be an estate at will of the Lord; but as it is an estate in Fee, performing the services & duties, the Law will account them Tenants in Fee: also recovery in value being but a fiction in Law, the common Vouchee shall be accounted to have the Land in value of the Coppyhold, within the Mannour; and the Vouchee 23 Hen. 8. *Br. Recovery* in value 27. that such a Recovery is used in ancient Demesne upon a Writ of Right, and Voucher over, and that of a Freehold there; yet enquire of such a Recovery upon a plaint there of Land of Base Tenure, for that cannot be warranted, &c.

But in the Common Bench, in Trespasse brought by *Comb*, against *Peares* and *Turner*, *Mich. 36. & 37. Eliz. Rot. 14. Bromley Brittain Hall in Essex*: Tenant in Tayle of a Coppyhold suffers a Recovery with Voucher, where no Recovery was before; the Lessee enters by the Court; that cannot be, but he shall have a Formdon in Descender; for the Recovery in Court Baron cannot avayl, because a Warranty cannot be annexed to an Estate which is at the Will of the Lord. Also there can be no Recovery in value; first because there can be no Recovery

*Adjudged in the Common Bench, that a Recovery cannot bind an Entaile.*

in value of Lands out of the Mannour, and the Coppy-land is at the Lords Will : Secondly, Coppy-hold Land is granted by Coppy only ; and if by the Recovery the Tenant may have it, the Course and Custom of the Seigniorie would be destroyed, which shall not be : Thirdly, the Lord shall lose his Fine, and Fealty also ; for the Coppy is *Admissus est tenens, &c. Et dat. Duo de fine pro tali ingressu, &c. Et fecit fidelitatem.* Fourth and fift, *Ph. & Mar.* A Coppyholder surrenders to the use of his Wife for life, the Remainder to the right Heires of the Husband and Wife ; the Wife dies, the Husband survives : the question is, who shall hold the Land ? and it was said that if the Husband had no issue by that Wife, then his Heire shall have it.

*Certaine*

*Certain Coppyhold Cases reported  
in a certain Book.*

**B**Vt it was said there, that if the Wife had issue by another Husband, it was there doubted. But it was holden by the better opinion in *Dier*, that the Husband and his Heires shall have the Land; yet if the husband had first two Sonnes, the Heires of the Husband, and the Heirs of the Wife shall have the Land in common after the decease of the Wife; and for proof thereof he puts this Case, If Land be given for Life, the remainder to two men and their Heires, they cannot have one Heire in the Case: if the Tenant for Life dye before them in remainder, they shall be joint Tenants, and the Heire of the Survivor shall have all: But if none in remainder be in Life, when the Tenant for Life dyes, then the Heires of them in the remainder shall hold in common.

Thirty seventh *Henry* the eighth; A Coppy holder to the intent to make an assurance to his Wife, suffers another to bring a Writ of Right in the Coppyhold Court, and they joine the Battell, and at the day the Husband and Wife make default, and finall judgement was given, and after the Recoverer surrenders the same Land into the Lords hands, to the use of the Husband and Wife and their Heires; and a good assurance *per Cur.*

A Coppyholder  
er brings an  
Action upon  
the Case  
gainst Lessee  
for wast and  
Good.

A Coppyholder makes a Lease at Will to another, who commits Waste, which is a cause of Forfeiture; the Lessor brings an action upon the Case against the Lessee by *Wallb Weston*, and *Dier*, the Lord may enter and have Trespasse against the Lessor his Tenant; and therefore it is reason that he shall be recompenced. But the Lord shall have a speciall Writ of Trespasse, and not *vi & armis*, because the entry was lawfull. 8 & 9. *Eliz. ibid.*

The Lord *Dacres* enters upon his Coppy'older, and Leaseeth it to a stranger for years: the Lessee enters and was ejected by the Coppyholder, and he brings a Writ of *Ejectione firme*: the Coppyholder pleads that the Lands are demisable *per Custome*: and so they were at issue, and he shewed in evidence a Coppy made 12. *Hen.* the eighth, by which a Tenant had surrendered the Lands, to have and to hold, &c. and whose Estate he had; and by another Tenant rendring the yearly Rent, Customes and Services; and also he produced certain Witnesses who proved the Land to be Coppy by the space of 69 years. The Plaintiffe to destroy the Title of that evidence, shewed certain Rentales that they were free Lands, &c. 9. et 10. *Hen.* 7. and not Coppy: and also another Rentall to that intent, in 12. *Hen.* 6. which proved that those Lands were Leased for twenty yeares: *per Cur.* this evidence doth not disprove the Coppy hold, for it was not within the time of memo-  
ry

ry: but if he had shewed the Indenture of Lease made within 50 yeares, or 40 yeares, so that a man might remember it, then it had been good, although the Statute of Limitation extends not unto it: by the Justices, such evidence as approveth it to be within time of memory is good.

Also by them; if those Lands bee in the hands of the Lord by Forfeiture, Escheat, or Surrender, yet the Custome remaineth; for he may demise them again, and the Custome shall be revived; but by some men, if by Escheat, it be in the Lords hands, the Custome is extinct.

8. & 9. Eliz. *ibidem*.

Addington Lord of Harlow in Essex, would encrease the Fines of his Copsyhold Tenants, which were proved to be certain: and it was holden that he could not encrease them; and it shall be a good prescription to say, alwayes ready to pay such a summe and no more. 18. 19. Eliz.

The Lord cannot increase a Fine which is certain,

4. Eliz. It was moved by Manwood Sergeant, if a Copsyholder in Fee in right of his Wife do surrender, the Wife being not examined by the Steward, but by some of the Tenants, the Custom permitting it, the Husband dyes: Whether the Wife shal sue by plaint in Nature of a *Cui in vita*, or may enter? And by him she may enter, because it is no discontinuance, for that it is a Surrender to the Lord who hath the reversion for if a Tenant in Tail enfeoffe him in the Reversion, it is no discontinuance; but if she had been exam-

I

mined

mined, she should have been barred for ever.

And *Dier*, if a Coppyholder in Taile surrender to the Lord to the use of a stranger, the Issue may bring a plaint in Nature of a Formdone in discender, and purge the discontinuance, for it is within the statute *De donis Conditionalibus*, *Lit. Fo. 16, Com. 233. 15. Hen. 8. Br. tit. Tenant per Copie 24.*

Nota,

And by *Manwood*, no negative Prescription may prevail against a Statute: And the Common Law is no other but an ancient usage throughout all the Realm; and a prime Custom may encounter with it, but not with a Statute.

And by *Dier*, if after the Surrender the Lord admit the Wife again, yet she shall be in by her Husband in construction of the Law.

Coppyhold of inheritance descends unto two sisters by two venters, none of them making entry, and before the Court and admission one of them dyes, her heire shall have her moiety, and not the other sister, by *Dier* chief Justice in the Chancery.

Also if a Coppyholder in Taile surrender to another in Fee, who is admitted, this is a discontinuance, and so the Husband of his Wifes Coppyhold: And he said, that a remitter shall be of a Coppyhold, as it shall be of a Freehold and inheritance at the Common Law. 13. & 14. *Eliz.*

In the *Dutchy* it was in question; whether a Coppy:



Coppyhold may be entailed or not? And by *Wray* Chief Iustice, and *Manwood* Chief Baron; the Taile was not Fee simple at the Common Law, if it did not appear by the Custome, and that may be proved by the Court Roles, or by some other proof that there is a Recovery by plain of Formidon, or the Lands had descended according to Land in Taile, as *possessio fratris* shall not be of it, or that the Daughter shall not inherit, before the Sonne which is uncle to the same. *Egerton* was of counsell with this Case which was between *Sherington* and another. 22. *Eliz.*

*Hanchet* and *Rosse* concerning Land of *Dicot* in *Stepping Hackney*, a Coppyholder of inheritance dies, the Lord grants the Wardship of the Land during the minority of the heire, to the Wife being sole; she takes a Husband and dies: It was demanded whether the Husband should have it or not? And it seemed not; but if it had been a thing in which he had interest to his own use, that he should have it as a Lease for yeares; the Executor shall have it without admittance of the Lord: so the Husband shall have a Lease for yeares made to his Wife, without admision.

By all the Iustices 17. *Eliz.* If a Coppyholder in Fee take an estate in Taile by Charterhold, or take a Lease for yeares by Indenture, his Coppyhold is confounded.

7. & 8. *Eliz.* by *Harpour* and others; a Lessee

for years of a Mannour may make his *Coppies* (if the *Custom* be so) to a man and Heires *secundum consuetudinem, &c.* for if the Coppyholder in Fee die, his *Heire* is in by descent, and ought to be admitted, or else he shall compell the *Lord* to admit him, for it is of necessity. But in *Coppies* for life or yeares it is otherwise; for by the death of the Tenant, there is not any that can compell the *Lord* to make him a new Coppy if he will not, but he may retain the *Land* in his own hands, and therefore the Grants of such *Coppies* as are expired, made by a lessee for yeares are void.

## 26. ELIZ.

First, *Land* demisable, by Coppy in the time of *Richard* the second, is perfect Coppyhold; so if it be demised by Coppy 15 or 16 years.

Secondly, if the *Lord* purchase the Coppyhold of his Tenant for money, this is clearly a Surrender, and an extinguishment of the Coppy, and it is not demisable by Coppy after. But if the *Lord* enter for forfeiture without presentment found, that is demisable by Coppy again.

Thirdly, if the *Lord* bring Trespasse against a Coppyholder, who pleads that it is Freehold, this is a Forfeiture, and the *Lord* may enter.

Fourthly, the *Lord* cannot seise, because his Coppyholder was sworn to give evidence against him, for this is no forfeiture.

Fift-

Fifthly, if a Copyholder disseise his *Lord* of other *Land*, that is not a forfeiture of the Copyhold. Sixthly, if a Copyholder die without *Heire*, and the *Lord* enter by *Escheat*, this is demisable by Copy again: but if the *Lord* afterwards do make a feoffment or suffer a Recovery, and after do repurchase it, it is not demisable, but if the *Lord* reverse the Judgement upon Recovery by error, attainr or deceit, and hath restitution, then it is demisable by Copy again.

A disseisin doth not extinguish the Custom, nor acts done by the disseisor.

Seventhly, if a Copyholder suffer a Recovery to be prescript at common *Law* by collusion, or make a feoffment, or bargain and sale, and the *Lord* enters, and makes a *Lease* for years thereof, this *Land* is not demisable by Copy again.

Eighthly, if a Copyholder surrender his *Land* to the intent that a stranger shall have the Rent out of it by Copy: it is no good Copyhold Rent.

Ninthly, if there be two joint Tenants in common of a Mannour; and a Copyholder surrenders to the use of one, this is not Copyhold *Land*.

Tenthly, if the Husband and Wife be joint Copyholders of the purchase of the Husband during Coverture, and the Husband is attainted of felony and dyeth, this is not a forfeiture of any part of the Copyhold: but if the purchase was made before the Coverture, then it is a forfeiture of the Moity. Ele.

Eleventhly, if two Coppyholders exchange by licence, and after the part of the one is recovered by an elder title, he may enter into the Land which the other hath in exchange.

Twelfthly, if two Coperceners Coppyholders make partition, and the one is impleaded, and doth lose by just title, and the recoverer enters into the Land, she cannot enter upon her sister, because she did not pray in aid for the rate. A feme Covert joynt Coppyholder in Fee may surrender her moiry to the use of her Husband, and it is good.

Thirteenthly, the Kings Steward without any patent of his office seisseth divers Coppyholds, and afterwards the *Lord* Treasurer and those of the *Exchequer* do lease the same *Land* for years, and thereupon it was moved, whether Coppies made by the Steward without patent were good? and the Lord *Dier* thought they were good Coppies, but in the *Exchequer* the Barons were of another opinion.

Fourteenthly, a man seisset of a Mannour, to which Coppyholders for yeares and others are belonging, he deviseth by Testament the same Mannour to a certain person for payment of his debts, during which time divers Coppies expire, and the Devisees grant new Coppies, and afterwards during the term, the Devisees grant in reversion, a particular Tenant surrenders in Court, to the use of the Grantee, and after the Wife of the Devisor recovers in Dower part of the Man-

nour, and hath Execution of those Coppy-holds assigned by the Sheriffe for her Dowre : And it was moved, whether the Wife shall avoid those Coppies made by the Devisees ? And Justice *Brown* was of opinion that no ; to which *Weston* agreed, for they said, that those are ordinary things, and which must be done of necessity by force of the Custome, and not any deed or new charge created by the Devisees, who are but Officers to execute the Custome which of necessity must be done, for they cannot be made by any others who have the possession of the Mannor, for it hath been adjudged, that such Coppies and ordinary things, as Presentment to a Church made by a Disseisor, or by a Lessee for Life or Years shall stand good, and shall not be avoided by reason of the necessity : but other charges created by the Heire after the death of the Husband, as a Lease for yeares Rent charge in which there is no such necessity, the Tenant in Dowre shall discharge them, and although the Wife shall be adjudged in by her Husband, yet she shall not have those things which chance before assignment of her Dowre. If a Wardship fall, or an avoidance of a Church, or a villain Regardant hath purchased, and the Heire enters, or presents, these things the Heir shall have, and not the Tenant in Dowre ; & it may be that the Wife will never sue for her Dowre, or peradventure she shall have other Mannours assigned her for the same. And as to the reason, that

it is not a thing of necessity to grant Coppies in reversion, yet they were of opinion that because the Custome doth allow it, it is *Custome ley*, and therefore it may be put in execution: for the Custome is annexed unto the Land, and not unto the interest of the Lord. But *Wray* said that of estates that are to Coppyholders and their Heires according to the Custome of the Mannour, if such a Coppyholder die without Heire, the Custome is determined. If such a Lessor for Life or yeares of the same Mannour grant new Coppies, they are not good, and so there is a diversity.

A man cannot devise that his friends shall make Coppies or hold Courts, for none shall make Coppies, but he that is Lord of the Mannour, and hath an interest.

The Lord of the Mannour shall have the government of the Coppyhold during the infancy of his Tenant. Executors shall have a Lease for yeares of Coppyhold Land without any new admittance.

The Husband of a V Wife that is Coppyholder for yeares, shall not be newly admitted after the death of the wife, nor be Tenant by the courtesie.

V Where inheritance of a Coppyhold descends, the Heire may enter without admittance; but it was a doubt whether he should have an action of Trespasse against a stranger before admittance; for before admittance he is not properly

*I may say  
a Coppyholder  
shall have  
a lease for  
yeares of  
the Mannour  
without  
any new  
admittance*

*A Coppyholder  
shall not  
properly  
be Tenant  
before admittance*

ly Tenant; if such an Heire will not come to the next Court, the Lord may make Proces against him.

A Coppingholder shall have Trespasse against his Lord, if his Lord out him, paying his Services and Customes.

If erroneous judgement be given against a Coppingholder in the Lords Court, the Lord in his Court may reverse it, for it is not amendable in any other place or Court.

If the Lessee of a Coppinghold commit waste, and the Lord seiseth for Forfeiture, the Coppingholder shall not have an action of waste against his Lessee; as if Tenant for life make a Lease for yeares, which Lessee maketh waste, and the Lessee recovers, the Tenant for life shall not have an Action of the Case, but is without remedy; for it was his folly that he would not have a collateral covenant of the Lessee that he should do no waste.

A Coppinghold is not forfeit for hereby the Stat. of 2. Hen. 5.

A Coppingholder is not Ter-Tenant, but is Tenant at the Lords will; and a Coppinghold is not bound by the Statute of Villis nor of Fines, nor of Limitations.

A Coppinghold shall not be extended by a Statute Merchant or Staple.

The Husband and Wife being seised of a Mannour to them and the Heires of the Husband, he grants a Rent charge out of it, and dies;

K the

*et in quocumque  
iudicio in hoc  
mundi reversibilis  
est, nisi dante  
reale reversibilis*

*not remedy  
for tenant for  
life after his  
Copp for years  
that remedy  
is left*

the Coppingholder surrenders, the VVife makes another Copping, and dies, the Grantee shall distrain upon the Coppinghold.

If the Lord of a Mannour hath a great waste, and grants a Rent charge out of the same, and the Coppingholders have Common in the waste, and they put in their Cattell, the Grantee shall distrain them, if they cannot make Prescription.

If a Coppingholder surrenders to the use of another, and the Lord will not admit him, nor make a Grant unto him, the Surrender is void.

If there be two Ioint Coppingholders, and the one commits a forfeiture, he shall forfeit but the Moity.

A Lessee for years of a Coppinghold shall have an *ejectione firme*; by *Plowden* and others.

If there be a Lease for yeares of a Mannour, and one Coppingholder purchase the Reversion in Fee, this is a destruction of the Coppinghold, and the Lessee of the Mannour may put him out, and occupy during his terme. 8. *Eliz.* adjudged.

A Coppingholder purchaseth the Mannour to him and another in Fee, the companion may occupy the Coppinghold jointly, presently 14. *Eliz.*

*Nota*, it was agreed in the Common Bench, 21. *Eliz.* that the Bayliffe of a Hundred, or of a base Court may take goods upon *levari facias*, to give Execution to the Plaintiffe, as well as the Sheriffe; yet they agreed that divers books are against it. 4. *Hen.* 6. 22.

Two

See before  
here fol. 75,  
and 76.



Two joint *Coppyholders* in Fee make a partition; that is good and no forfeiture, nor alienation. 12. *Eliz.* agreed in Dutchy chamber.

If a *Coppyholder* surrender, and then the Lord doth acknowledge a Statute Merchant, and after the Lord grants it by *Coppy*, the *Coppyhold* is liable; for at the time of the acknowledgment it was annexed to the Freehold; but if a *Coppyholder* acknowledge a Statute, that is not liable.

If a man enter with force upon a *Coppyholder*, he shall not have forceable entry, nor indictment, but the Lord shall have it; and upon restitution to the Lord, the *Coppyholder* shall enter.

The Lord grants to a *Coppyholder* his trees growing, or that shall be growing upon the Land; he may fell trees now growing, and no Forfeiture, by reason of the dispensation, but he cannot cut the trees which shall grow in time to come.

If the Disseisor of a Mannour make Copies for life, and the Disseisee enter, he shall defeat them; but of *Coppyholds* in Fee before Disseisin, and a new grant of them upon Surrender in time of Disseisin, it is otherwise per *Plowden*.

*Popham* in Case *Ramsay* advers. *Arthur* 29. *Eliz.* A *Coppyholder* may prescribe to have common in the Lord's Land.

If a *Coppyholder* surrender to the use of another, and the Lord grant it to cesty que use, making

king no mention of the Surrender, yet it is good  
per *Plowden*.

If there be a Mannour consisting of Dmeaf-  
nes, Freehold and Customary Tenements, if  
the Lord grant certain of the Coppyholds in  
Fee, the Grantee may keep Court, and do ho-  
mage, and the Coppyholders by their oaths may  
make presentments of their Customes, or of  
the death of any Tenant, and the Grantee may  
make in Court a new estate by Coppy, as if it  
should be a perfect Mannour; but the stile shall  
not be *Curia Manerii*, but *Curia Halimoti, id  
est Convocatio tenentium*, for when they are as-  
sembled they may enform the Lord of their  
Customes and duties. It was otherwise adjudg-  
ed in the *Com. Bench. 29. Eliz.* between *Dod-  
dington* and *Chaffin* for parcell of the Mannour  
of *M.*

It was adjudged in the common Bench 29.  
*Eliz.* that where Sir *Peter Caren* being solely  
seised of the Mannour of *M.* in the County of  
*Devonshire* for life, granted a Coppie in rever-  
sion according to the Custome of the Mannour,  
and died before the particular Coppyholder:  
this is a good Coppy in Reversion against the  
Lord, in whose hands soever the Signiory should  
come.

FINIS.

*a good copy  
of the Mannour  
of M. in the County  
of Devonshire  
for life, granted  
to the Coppyholder  
in Reversion  
against the Lord*

( )

## The TABLE.

<b>VV</b> <i>Hat a Coppyhold is.</i>	Pag. 2.
<i>Vpon what grounds a Coppyhold doth consist.</i>	Pag. 3.
<i>Of the estimation of Coppyholds by antiquity of time, and by the Laws and Statutes of this Realm,</i>	Pag. 3. and 4. &c.
<i>What shall be said such a Mannour as will maintain a Coppyhold,</i>	Pag. 7.
<i>Of Demeasnes, and why so called,</i>	Pag. 8.
<i>Where there may be a Mannour, and Coppyholders without Demeasnes, and Services,</i>	Pag. 11.
<i>Of Tenures, which be good, and which be not,</i>	Pag. 12. &c.
<i>What shall be said a good Custome to be able to maintain a Coppyhold,</i>	Pag. 13. 14.
<i>The Division of Customes fourefold.</i>	Pag. 15.
<i>What measure of time shall make a Custom.</i>	Pag. 16.
<i>The difference between a Custome, and a Limitation,</i>	Pag. 17.
<i>Seven properties incident for the maintenance of a good Custome,</i>	Pag. 19.
<i>Of Vser, non Vser, Abuser and Interuser, and cases thereupon,</i>	Pag. 20. &c.
<i>Where Abuser, or non Vser is a Forfeiture,</i>	Pag. 21.
<i>What shall be said a reasonable Custome,</i>	Pag. 23.
<i>What shall be said a Custom certain,</i>	Pag. 24. &c.
<i>Where Custome shall be said to be according to Common Right.</i>	Pag. 26. & 27.
	where

( )

where a Custome shall be said to be upon a good  
consideration, pag. 28.

where a Custome shall be said to be compulsory,  
pag. 30.

All Customes and Lawes, have their effects in  
two points, ibidem.

Where Custome shall bind the King and where  
not, pag. 31.

Two things necessary for him who claimeth, pag. 32.

The form of pleading Prescription, pag. 33.

A Court Baron incident to a Mannour, pag. 34.

A Court Baron consisteth of four parts, ibid.

The definition thereof, ibidem.

Of Court Rolls what maketh a good Court Roll,  
and what will make a good Coppy, pag. 36 &c.

who shall be said a Lord of a Mannour able to grant  
a Coppyhold, pag. 37 &c.

who shall be said such a Tenant as may be a Coppy  
holder, pag. 39.

What things are Demisable by Coppy, pag. 40.

What Statutes do extend to Coppyholds, pag. 42.

Whether Coppyhold be intailable pag. 43.

What shall be said a good Surrender, ibidem.

What shall be said a good admittance of a Coppy-  
holder, pag. 45.

Whether a Coppyhold be liable to Statutes pag. 46.

Where an Entry is lawfull before admittance, p. 47.

Admittance may be three manner of wayes, ibidem.

What shall be said a Forfeiture of a Coppyhold,  
pag. 49.

What offences or forfeitures (ipso facto) and what

( )  
not before presentment made

ibide m

where an Infant may forfeit his Coppyhold, pag. 52.

What power the Lord, the Steward, &c have in a  
Court Baron, pag. 53.

where a Court Baron may be without Freeholders, p. 54.

The Lord hath three distinct Authorities, ibidem.

The Steward hath severall Authorities, pag. 55.

What parts the Freeholders, Coppyholders, and Bailiffs do fulfill, and their distinct Authorities, ibidem.

The force of an English Bill by a Coppyholder before the Lord in his Court, pag. 56.

Upon recovery in debt in a Court Baron what remedy for the Plaintiffe, pag. 57.

Where a Coppyholder may plead a peculiar Custom, pag. 58.

Where a Custom is good to cut down trees, &c. pag. 59.

How a Coppyholder may make a Jointure of his Coppyhold to his Wife, pag. 60.

When a Coppyholder may bring an Action upon the Case against his Lessee for waste, pag. 64.

What Evidence is sufficient to prove a Coppyhold, pag. 65.

The Lord cannot increase a Fine certain, pag. 66.

Whether a Surrender by a Coppyholder seized in the Right of his Wife make a discontinuance, ibid.

Whether a Negative Prescription may prevail against a Statute, ibid.

Where there may be a remitter of a Coppyhold, p. 67.

Who is Lord of a Mannour compellable to admit a Coppyholder, pag. 68.

What remedy for a Coppyholder upon an erroneous judgement

( )  
judgement against him in the Lords Court, pag. 73.  
A Coppyhold not forfeited for Heresie, ibidem.  
Two joint Coppyholders, one forfeiteth, a Moity  
only forfeited, pag. 74.  
Two joint Coppyholders make partition, neither  
Forfeiture, nor Alienation. pag. 75.

---

The End of the Table.

---

